

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
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UNITED STATES OF AMERICA,

Plaintiff,

-against -

Civil Action No. CV-19-1519  
(Dearie, J.)  
(Pollak, M.J.)

CITY OF NEW YORK and NEW YORK  
CITY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,

Defendants.

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**NOTICE OF LODGING OF AMENDMENT TO CONSENT DECREE**

The United States of America respectfully gives notice of lodging with the Court a proposed Amendment to the Consent Decree and Judgment (“Amendment”) in the above-captioned action. **No action is required by the Court at this time.**

Pursuant to 28 C.F.R. § 50.7, the United States will publish a notice in the Federal Register that the proposed Amendment to the Consent Decree and Judgment has been lodged with the Court. The notice will solicit public comment for a period of 30 days. Section III of the Amendment reflects the parties’ agreement that final approval and entry of the Amendment is subject to this public comment period. After the close of the comment period, the United States will evaluate any comments received and determine whether any comments disclose facts or considerations that indicate that the proposed Amendment is inappropriate, improper or inadequate, and will advise the Court whether the United States requests that the Amendment be entered.

**Accordingly, the United States respectfully requests that the Court not sign the proposed Amendment unless and until the United States moves for entry of the Amendment to the Consent Decree and Judgment.**

Dated: April 13, 2022

Respectfully submitted,

BREON PEACE  
United States Attorney  
Eastern District of New York  
271 Cadman Plaza East  
Brooklyn, New York 11201

By: s/Deborah B. Zwany  
DEBORAH B. ZWANY  
Assistant U.S. Attorney  
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# EXHIBIT A

## PROPOSED AMENDMENT TO THE CONSENT DECREE AND JUDGMENT

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:
	:
Plaintiff,	:
	:
STATE OF NEW YORK,	:
	:
Plaintiff-Intervenor	:
	:
v.	:
	:
CITY OF NEW YORK and NEW YORK	:
CITY DEPARTMENT OF	:
ENVIRONMENTAL PROTECTION,	:
	:
Defendants.	:

-----X

Civil Action No.: 19-CV-1519  
(Dearie, J.)  
(Pollak, M.J.)

AMENDMENT TO THE CONSENT DECREE AND JUDGMENT

WHEREAS, on March 18, 2019, Plaintiff United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), filed a complaint in this action and lodged a Consent Decree and Judgment by authority of Section 1414(b) of the Safe Drinking Water Act, 42 U.S.C. § 300g-3(b), (“the SDWA”). The United States alleged that Defendants had continuing violations of the SDWA and the Long Term 2 Enhanced Surface Water Treatment Rule (“LT2 Rule”), 40 C.F.R. § 141, Subpart W, an applicable requirement of the SDWA. These violations resulted from the failure of Defendants, the City of New York and the New York City Department of Environmental Protection (collectively “the City”), to cover the Hillview Reservoir, a finished water storage facility, in accordance with the provisions of 40 C.F.R. § 141.714; and

WHEREAS, on March 20, 2019, Plaintiff-Intervenor the State of New York, by and through the New York State Department of Health (“State”), filed a Complaint-in-Intervention in this action for violations of the New York State Department of Health’s Administrative Order AT 940772-CO (“the Order”). The Order was issued on February 22, 2008 pursuant to provisions of the State Sanitary Code, 10 NYCRR Part 5. The Order required the City, inter alia, to cover the Hillview Reservoir and to implement various operational changes at the Reservoir; and

WHEREAS, on May 15, 2019, the Court entered a Consent Decree and Judgment in this action (the “Consent Judgment”) (ECF Docket No. 11); and

WHEREAS, the City represents that to ensure the reliable delivery of water to City consumers and the City’s ability to meet water demand throughout the year, both the Kensico-Eastview Connection Project (“KEC”) and the Hillview Reservoir Improvements (“HRI”), as modified herein, must be completed before construction of the Hillview Cover starts; and

WHEREAS, at the time the Consent Judgment was entered in May 2019, the City believed that a new hydraulic interconnection between the Hillview Reservoir and City Tunnels No. 2 and 3 (the East Basin Interconnection (“EBI”)) should be included in the HRI schedule of the Consent Judgment; and

WHEREAS, since entry of the Consent Judgment, the City conducted the HRI Facility Planning Report and HRI Project Basis of Design Report in accordance with Milestones described in the Consent Judgment at Paragraphs 31 and 32; and

WHEREAS, as part of the HRI Facility Planning and Basis of Design analysis, the City determined that the EBI was no longer critical and necessary for construction as part of the HRI, and instead should be deferred to the Hillview Cover Project for additional analysis and development during Hillview Cover Facility Planning; and

WHEREAS, the Parties have agreed, subject to public notice and comment and Court approval, to amend the Consent Judgment to provide that the EBI will be a part of the Hillview Cover Project schedule rather than the HRI schedule; and

WHEREAS, Paragraph 159 of the Consent Judgment provides that the terms of the Consent Judgment “may be modified only by a subsequent written agreement signed by all the Parties, and where the modification constitutes a material change to this Judgment, it shall be effective only upon approval by the Court;” and

WHEREAS, the Plaintiffs believe this amendment is a material change to the Consent Judgment, although not a major modification, and accordingly seek the Court’s approval; and

WHEREAS, the Parties recognize, and the Court by entering this Amendment to the Consent Decree and Judgment (“Amendment to the Consent Judgment” “or “Amendment”) finds, that this

Amendment to the Consent Judgment has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Amendment to the Consent Judgment is fair, reasonable, and in the public interest.

NOW, THEREFORE, upon the consent of the Parties, as evidenced by the signatures of their representatives below,

IT IS HEREBY ADJUDGED, ORDERED, AND DECREED that the Consent Judgment in this action is amended in accordance with this Amendment to the Consent Judgment as follows:

I. Subparagraphs 9.s. (definition of Hillview Cover) and 9.t. (definition of Hillview Reservoir Improvements) of the Consent Judgment are amended to read as follows:

s. “Hillview Cover” shall mean the cover to be constructed in order to achieve compliance with the LT2 Rule, 40 C.F.R. §141.714, for the Hillview Reservoir. It is anticipated that the Hillview Cover will be constructed in phases, referred to herein as Hillview Cover – Site Preparation (or “Site Preparation”), Hillview Cover – East Basin (or “East Basin Cover”), and Hillview Cover – West Basin (or “West Basin Cover”). In addition, construction of a new hydraulic interconnection between the Hillview Reservoir and City Tunnels No. 2 and 3 (the East Basin Interconnection (“EBI”)) shall be included in the Hillview Cover Project, East Basin Cover phase.

t. “Hillview Reservoir Improvements Project” or “Hillview Reservoir Improvements” (“HRI”) shall mean projects at the Hillview Reservoir that the City represents are necessary prior to commencement of construction of the Hillview Cover, including Hillview chemical addition facilities and Hillview facility and flow control improvements, which will (i) improve uptake and duntake chemical storage and provide flow-paced chemical feed systems, (ii) replace sluice gates and operators which control incoming and outgoing flow and replace other mechanical flow-control

equipment, (iii) make structural/architectural/electrical improvements to existing infrastructure to allow the facility to continue operating safely and reliably, and (iv) maintain appropriate flow monitoring and chemical dosage control.

II. Paragraph 45 of the Consent Judgment (part of the Hillview Cover Facilities Planning schedule requirements) is amended to read as follows:

45. By April 30, 2025, notify the United States and the State, of 1) the City's selected type of cover for the Hillview Cover, together with a description of the benefits of the selected type of cover, 2) any modification to the City's determination that the KEC must be completed before construction of the Hillview Cover starts based on the City's analysis of hydraulic operating criteria developed during Hillview Cover facility planning, and 3) the City's evaluation of the impact, if any, on the milestones for the Hillview Cover. In addition, by April 30, 2025, provide the City's evaluation of the beneficial use and need to construct the EBI as a part of the East Basin Cover project. If the City seeks to change the requirement that it construct the EBI as part of the East Basin Cover project, the City shall seek a modification to that requirement under Section XVIII of the Consent Judgment.

III. This Amendment to the Consent Judgment shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent to this Amendment to the Consent Judgment if the comments regarding the Amendment to the Consent Judgment disclose facts or considerations indicating that the Amendment to the Consent Judgment is inappropriate, improper, or inadequate. The City consents to entry of this Amendment to the Consent Judgment without further notice and agrees not to withdraw from or oppose entry of this Amendment to the Consent Judgment

by the Court or to challenge any provision of the Amendment to the Consent Judgment, unless the United States has notified the City in writing that it no longer supports entry of the Amendment.

IV. The Effective Date of this Amendment to the Consent Judgment shall be the date on which this Amendment to the Consent Judgment is entered by the Court or a motion to enter is granted, whichever comes first, as recorded on the Court's docket. Unless and until the Amendment is entered by the Court, the Consent Judgment remains the Consent Decree and Judgment as entered on May 15, 2019, including the appendices attached thereto, which is in full force and effect. If the United States, in consultation with the State, withdraws or withholds consent to this Amendment before entry, or the Court declines to enter the Amendment, the Consent Judgment as entered on May 15, 2019, will continue to remain in effect as if this Amendment to the Consent Judgment was never filed. Upon the Effective Date of this Amendment, the Consent Judgment in this action shall be the Consent Decree and Judgment entered by the Court on May 15, 2019, including the appendices attached thereto, as amended by this Amendment to the Consent Judgment, and all requirements thereof shall be and continue in full force and effect.

V. Each undersigned representative of the City, the State, the United States Attorney for the Eastern District of New York, and the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Amendment to the Consent Judgment and to execute and legally bind the Party he or she represents to this document. This Amendment to the Consent Judgment may be signed in counterparts, and its validity shall not be challenged on that basis.

Dated and entered this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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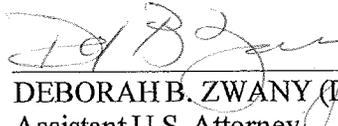
HONORABLE RAYMOND J. DEARIE  
UNITED STATES DISTRICT JUDGE  
Eastern District of New York

FOR PLAINTIFF UNITED STATES OF AMERICA:

NATHANIEL DOUGLAS  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

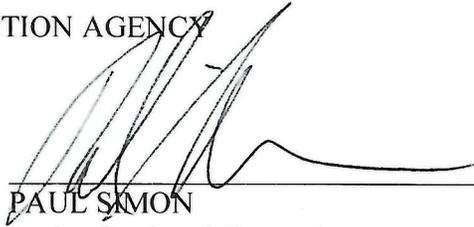
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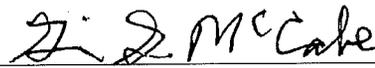


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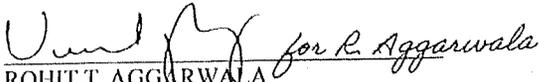
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